

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1130 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BABULAL JETHALAL JUNGJI KHARWA

Versus

STATE OF GUJARAT

Appearance:

MR.PRAVIN GONDALIA FOR MR YOGESH S LAKHANI for Petitioner
MR GOHIL, ASSTT. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/02/99

ORAL JUDGEMENT

#. The prayer of the petitioner in this writ petition under Article 226 of the Constitution of India is to quash the show cause notice Annexure-A, order of the externing authority Annexure-B and the order of the appellate authority Annexure-C to the writ petition.

#. The externing authority issued a show cause notice to the petitioner under Section 59(1) of the Bombay Police

Act to show cause as to why he should not be externed for two years from four districts viz. Junagadh, Probandar, Amreli and Rajkot. The material for issuing this notice before the externing authority was three registered offences against the petitioner under IPC out of which one was registered in the year 1998 and the remaining two cases were registered in the year 1995. The preventive action under section 107 and 116 of the Cr.P.C. through Chapter Case No.62 of 1998 was also taken against the petitioner. The two confidential witnesses disclosed something against the petitioner and on the basis of the aforesaid material the show cause notice Annexure-A was issued on 23rd June, 1998.

#. The petitioner appeared and offered his reply to the show cause notice. He also examined five witnesses and produced 31 certificates showing his good character. Considering all these materials, the externing authority passed the externment order Annexure B against the petitioner on 29th August, 1998. The petitioner preferred an appeal which was dismissed by the appellate authority on 16th November, 1998 hence this writ petition.

#. Having heard the arguments of the learned counsel for the petitioner and the learned AGP, I feel that the petition must succeed for the following reasons.

#. It is obligation of the externing authority to disclose in the show cause notice the entire material to the proposed externee on which proposed action was suggested. Disclosure of material includes disclosure of extract of statements of confidential witnesses if any. It also includes disclosure of the activities of the petitioner which are considered to be nefarious, with reference to the date, time and place. It is found from the record that in the show cause notice, it is not mentioned what the two confidential witnesses stated before the authority against the petitioner. The only disclosure in the show cause notice is that the two witnesses in their statements corroborated the activities of the petitioner. This disclosure cannot be said to be effective disclosure to enable the petitioner to submit effective reply to the show cause notice. Likewise, mere disclosure of three registered criminal cases is not enough. No further disclosure regarding these cases was required but if there were other activities of the petitioner on which the show cause notice was issued those activities should have been disclosed with reference to the date, time and place. That has not been done. In the opening portion of the show cause notice.

Only general allegations have been made without disclosing the period, date and time of involvement of the petitioner in criminal and anti social activities. Thus, the entire material on which the show cause notice was issued was not supplied to the petitioner as a result of which the petitioner was deprived from furnishing effective reply in his defence and this has rendered the show cause notice, externment order and the order of the appellate authority invalid. If alternative preventive action under Section 107 and 116 (3) of the Cr.P.C. was taken in the year 1998 in Chapter Case No.62/98, there was no reasons for taking drastic action against the petitioner by externing him from four districts. The learned AGP has contended that the purpose of externment from four district was to prevent the petitioner from entering Veraval, which is adjoining these district but this contention cannot be accepted for the reason that there is no disclosure that the petitioner ever operated from the adjoining districts during these three years. Thus the reasons given by the externing authority are mechanical and unfounded.

#. No repetition of activities between the year 1995 to 1998 has been specifically disclosed. The two confidential witnesses have not stated the period during which the petitioner was involved in such activities. Consequently, merely on the strength of the three registered cases, two in the year 1995 and one in the year 1998, it cannot be said that the activities of the petitioner were so offensive that externment was the only remedy. Even the registered cases are not of serious nature. Moreover, for these registered criminal cases, the petitioner will face the trial and if these cases are established, he will be punished. It cannot be said that these cases reflect about the commission of serious offences. Offences punishable under Section 303, 324, 325 and 307 of IPC are not of such serious nature for which the petitioner must be externed from four districts.

#. The impugned order of the externing authority seems to have been passed in mechanical manner. He has made reference that the petitioner committed offences punishable under Chapter 16 & 17 of the IPC. But I do not find that any of the offences mentioned in all the three registered criminal cases are punishable under Chapter 17 of the IPC. The appellate authority in its judgment has also admitted that no offence under Chapter-17 of IPC has been registered against the petitioner. If in such casual and mechanical manner the show cause notice was issued and the externment order was

passed, it is difficult to sustain the two impugned orders. The appellate authority should have seriously considered this lapse on the part of the externing authority.

#. The petitioner examined five witnesses in his defence and filed 31 certificates showing his good behavior. But no reason has been given why the defence witnesses were not relied upon and what were the grounds for not relying upon 31 certificates filed by the petitioner. The externing authority simply observed that looking to the evidence of the case, it does not appear that the submission is proper. The submission was on the point that the defence evidence was not considered by the externing authority. Non consideration of defence evidence renders the externment order incomplete and illegal. The appellate authority has not at all considered this aspect of the matter which also renders the order of the appellate authority invalid.

#. For the reasons given above, the two orders cannot be sustained. The writ petition therefore succeeds and is allowed. The impugned orders - Annexure-B & C to the writ petition are hereby quashed.

Date: 2-2-1999 (D.C.Srivastava, J.)

* kailash